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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,871	10/03/2003	Jack Wasserman	672988/0003	1275
7590 Steven B. Pokotilow Stroock & Stroock & Lavan LLP 180 Maiden Lane New York, NY 10038		10/17/2007	EXAMINER VIG, NARESH	
			ART UNIT 3629	PAPER NUMBER
			MAIL DATE 10/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/678,871	Applicant(s) WASSERMAN, JACK	
	Examiner Naresh Vig	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 4, 10 - 17, 78 and 80 - 81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 4, 10 - 17, 78 and 80 - 81 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is in reference to communication received 12 October 2006. Claims 1 – 4, 10 – 17, 78 and 80 – 81 are pending for examination.

Response to Arguments

Applicant's arguments and concerns are for pending amended claims which have been responded to in response to the pending claims.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being vague and indefinite. Applicant recites the limitation providing up-front monetary payment to a plurality of sellers; receiving listings from the plurality of sellers; receiving a second consideration from a group of the plurality of sellers for which a corresponding sale condition is met. As currently claimed, it is not clear how the group is formed, does it include all the sellers of a real estate property etc.

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Claims 10 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being vague and indefinite. Applicant recites the limitation the group of sellers have different sale conditions. It is not clear whether claim is for a single property, or, for plurality of properties.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 6, 8, 10 – 12, 78, 80 and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over San Diego Real Estate Library hereinafter known as REL in view of Using Banks and Bank Accounts: Post dated check hereinafter known as UBBA.

Regarding claim 1, REL teaches a method for a real estate agent to obtain a real estate listing for a property of a seller.

REL teaches real estate agent receiving from the seller the real estate listing for the property in return for providing an up-front payment to the (\$500 upfront Cash guarantee) [REL page 6]. Even though REL does not teach real estate agent providing

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an up-front monetary payment to the seller for receiving from the seller the real estate listing for the property. However, REL explicitly teach giving a postdated check to the seller [REL, page 6]. UBBA teaches that a postdated check can be cashed prior to the date on the check.

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art that seller can use the postdated check prior to the date on the post date check because as taught by UBBA, The Uniform Commercial Code which most states have adopted in one form or another permits banks to either pay or return a post dated check unless you (check originator) have specifically notified the bank of the check, similar to a stop payment.

REL in view of UBBA teaches capability for:

the real estate agent providing the up-front monetary payment to the seller at the time the real estate agent receives the listing from the seller [REL, page 6], and

wherein the seller retains the up-front monetary payment received from the real estate agent if a sale condition for the property is not met during a defined period of time (60 days time limit taught by REL) [REL, page 6]; and

the real estate agent receiving consideration from the seller if the sale condition is met during the defined period of time (REL teaches 6% fee) [REL, page 5, line 1].

Regarding claim 3, REL in view of UBBA teaches concept wherein sale condition is receipt of a bona fide offer to purchase the property (REL teaches going into escrow as a condition for fulfilling their due diligence to the seller).

Regarding claim 10, as best understood by examiner, REL in view of UBBA teaches capability for working with plurality of clients (i.e. property for sale wherein there are plurality of registered owners in the title for the property). REL teaches capability for:

- providing up-front monetary payment to a plurality of sellers;
- receiving listings from the plurality of sellers;
- receiving a second consideration from a group of the plurality of sellers for which a corresponding sale condition is met.

Regarding claim 11, as responded to earlier REL in view of UBBA teaches capability wherein the listing can be exclusive listing.

Regarding claim 12, as best understood by examiner, REL in view of UBBA teaches capability wherein the group of sellers have different sale conditions (for example, settlement date).

Regarding claim 13, REL does not explicitly teach the real estate agent receiving financing from a financing agent. However, it is old and known to one of ordinary skill in the art at the time of invention that business have acquired Business Loans to run their business (see KSR Int'l Co. v. Teleflex, Inc., No 04-1350 (U.S. Apr. 30, 2007)).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that REL agents can get business loans to be able to cover the payment to sellers and to maintain operations of their business.

Regarding claim 14, REL does not explicitly teach real estate agent using the financing to provide the up-front monetary payment to the seller. However, it is old and known to one of ordinary skill in the art at the time of invention that business used the borrowed money to make payments, pay bill, etc. (see *KSR Int'l Co. v. Teleflex, Inc.*, No 04-1350 (U.S. Apr. 30, 2007)).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that REL in view of UBBA teaches capability wherein real estate agent using the financing to provide the up-front monetary payment to the seller.

Regarding claims 15 – 16, REL in view of UBBA does not explicitly teach making payment to the financing agent in return for receiving financing. However, it is old and known to one of ordinary skill in the art at the time of invention that there are closing costs, applicable interest rate, and monthly associated with a loan (see *KSR Int'l Co. v. Teleflex, Inc.*, No 04-1350 (U.S. Apr. 30, 2007)).

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art that REL in view of UBBA teaches capability wherein real estate agent gets financing from a financing agent (i.e. a lender) to make upfront payment, then, the real estate agent makes payment to the financing agent in return for receiving the

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financing (applicant is claiming borrower making payment towards their loan to the lending entity as their claimed invention).

Regarding claim 17, REL in view of UBBA does not explicitly teach paying a percentage of commissions for sale of one or more properties as payment to the financing agent in return for the financing. However, it is old and known to one of ordinary skill in the art at the time of invention that businesses pay their financing monetary obligations from the revenue they have generated (e.g. business paying interest to the lending institution from the revenue generated). In addition, profit sharing is old and known to one of ordinary skill in the art at the time of invention (see *KSR Int'l Co. v. Teleflex, Inc.*, No 04-1350 (U.S. Apr. 30, 2007)).

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art that REL in view of UBBA teaches capability wherein the real estate agent makes payment to the financing agent in return for the financing by paying a percentage of commissions for sale of one or more properties (applicant how a business pays their loan obligations as their claimed invention).

Regarding claim 78, REL in view of UBBA teaches capability wherein receiving second consideration includes receiving an increased commission as compared to other contracts for real estate listings (REL teaches their fee is 6% in most cases) [REL, page 5].

Regarding claim 80, REL in view of UBBA teaches capability wherein the real estate listing is an exclusive real estate listing for an exclusivity time period, and wherein the time period equals the exclusivity time period (REL teaches 60 days agreement) [REL, page 6].

Regarding claim 81, REL in view of UBBA teaches capability wherein the up-front monetary payment is accompanied by services (due diligence of real estate agent).

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over San Diego Real Estate Library hereinafter known as REL in view of Using Banks and Bank Accounts: Post dated check hereinafter known as UBBA and Mini et al. US Patent 6,684,196.

Regarding claim 2, REL in view of UBBA does not explicitly teach using a computer to track to track the real estate listing and the second consideration. However, REL teaches providing services over the internet. Mini teaches methods and apparatus by which a real estate transaction may be initiated and facilitated from beginning to end largely via the Internet.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify REL in view of UBBA as taught by Mini to conveniently complete most of the stages of the transaction online.

Regarding claim 4, REL in view of UBBA and Mini teaches idea wherein sale condition is an executed purchase contract.

Conclusion

Applicant is required under 37 CFR '1.111 (c) to consider the references fully when responding to this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naresh Vig whose telephone number is (571) 272-6810. The examiner can normally be reached on Mon-Thu 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Naresh Vig
Examiner
Art Unit 3629

October 11, 2007